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MICHAEL ROBAK, JR.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1193

TELEPROMPTER CORPORATION,
*Petitioner,*

—v—

UNITED STATES OF AMERICA,
*Respondent.*

## REPLY MEMORANDUM OF TELEPROMPTER CORPORATION, PETITIONER

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Teleprompter Corporation's Petition for Certiorari raises a fundamental and pervasive issue of federalism: What sources of law should a federal court look to in deciding an issue of substantive criminal law under a federal statute, such as the Travel Act, that makes it a federal crime to violate state law. The Solicitor General, in his memorandum in

opposition, seeks to trivialize this issue by implying that Teleprompter is merely seeking to have this court "review the lower courts' reading of Pennsylvania law".

As a reading of the lower courts' opinions conclusively demonstrates, neither the Court of Appeals nor the District Court applied Pennsylvania law. Indeed the lower courts acknowledged that the Pennsylvania law was "at best, vague on the question of whether extortion is a complete defense to bribery". (Pet. App. 41a) Instead of turning to Pennsylvania case law and policy to determine how the courts of that state would construe an admittedly vague law, the lower courts turned to federal "policy" and federal case law and decided what they regarded to be "preferable" from a *federal* point of view. (Pet. App. 10a) In doing so, they totally ignored the long-standing policy of Pennsylvania which required that "when a criminal statute calls for construction, it is not the construction that is supported by the greater reason that is to prevail but that one which, if reasonable, operates in favor of life and liberty". *Commonwealth* v. *Exler*, 243 Pa. 155, 162, 89 A. 968, 971 (1914). Further, they disregarded the law of New York—the other state in which the interstate transaction occurred —which the government concedes would have required the instruction on extortion sought by Teleprompter.

We do not understand the Solicitor General to dispute Teleprompter's contention that there is considerable confusion in the lower federal courts as to the appropriate hierachy of substantive criminal law to which a federal court should turn in prosecutions brought under the Travel Act and the numerous other statutes that incorporate state

criminal law. (Tel. Pet. 10-11) This case presents an ideal vehicle through which this court can provide the needed authoritative guidance on this important issue.

Dated: New York, New York
May 1, 1973

Respectfully submitted,

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